



The Public Service Commission State of South Carolina

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**SC SECRETARY
OF STATE**

*Allyson Green @1:15 PM
803-734-0360*

June 3, 2022

Via Hand Delivery Only

South Carolina Secretary of State
Attn: Service of Process
1205 Pendleton Street
Columbia, SC 29201

RE: **Service of Process Request on Non-Profit Entity**
Docket No. 2022-188-EC – Spectrum Southeast, LLC, Complainant v. York Electric Cooperative, Inc., Respondent, Petition to Determine Just and Reasonable Terms and Conditions for Pole Attachment Agreement Pursuant to S.C. Code Ann. § 58-9-3030

Dear Sir or Madam:

Enclosed please find the following pertaining to the above-referenced docket:

1. 30-Day Notice;
2. Petition to Determine Just and Reasonable Terms and Conditions for Pole Attachment Agreement Pursuant to S.C. Code Ann. § 58-9-3030;
3. Prefile Testimony Deadline Letter;
4. Notice of Hearing;
5. Certificate of Service; and,
6. Twenty Dollars (\$20.00) cash to cover the required fee for this service.

It is our understanding that, pursuant to S.C. Code Ann. § 33-31-1707, your office will attempt to serve the above-referenced documents on the following non-profit entity: **York Electric Cooperative, Inc.** It is also our understanding that following your attempts and/or actual service, you will provide verification of your efforts regarding same to us.

Presently your website search reflects the following Registered Agent information for this entity:

Headquarters
East Liberty Street
York, South Carolina 00000

Please feel free to contact me at 803-896-5100 if you have any questions. Please also direct any future correspondence to me.

Sincerely,



Elise Wilson
Clerk's Office
Public Service Commission
of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

Enclosures

cc: All Parties of Record Via Email Only

**BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**

DOCKET NO. 2022-188-EC

Spectrum Southeast, LLC,

Complainant,

v.

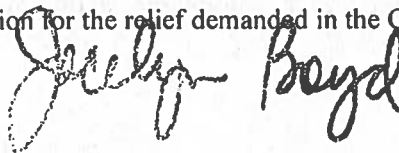
York Electric Cooperative, Inc.,

Respondent.

NOTICE

TO: THE ABOVE-NAMED DEFENDANT/RESPONDENT

PLEASE TAKE NOTICE you are hereby required, pursuant to S. C. Code Ann. Regs. 103-826 and 103-830 of the Commission's Rules of Practice and Procedure, to answer the allegations contained in the Complaint filed herein, a copy of which is herewith served upon you, and further to serve a copy of your Answer to said Complaint/ Petition upon the *Public Service Commission of South Carolina, Attn: Clerk's Office, 101 Executive Center Drive, Suite 100, Columbia, South Carolina 29210; the Complainant/Petitioner; and the Office of Regulatory Staff* and to file your Answer with certification of service with the Public Service Commission at the address below; with the Complainant/Petitioner; and with the Office of Regulatory Staff within thirty (30) days of receipt of the Complaint, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Complainant/Petitioner may apply to the Commission for the relief demanded in the Complaint.



Jocelyn Boyd
Chief Clerk/Executive Director
Public Service Commission of SC
101 Executive Center Drive, Suite 100
Columbia, SC 29210

06/03/2022

WILLOUGHBY & HOEFER, P.A.

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SPECIAL COUNSEL

May 19, 2022

*ALSO ADMITTED IN TEXAS

**ALSO ADMITTED IN WASHINGTON, D.C.

***ALSO ADMITTED IN CALIFORNIA

****ALSO ADMITTED IN NORTH CAROLINA

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

RE: *Spectrum Southeast, LLC, Complainant, v. York Electric Cooperative, Inc.,
Respondent, Docket No. 2022-_____.*

Dear Ms. Boyd:

Pursuant to the South Carolina Broadband Accessibility Act, S.C. Code Ann. § 58-9-3000, *et seq.*, and Public Service Commission of South Carolina ("Commission") Regulation 103-825, please find enclosed for filing on behalf of Complainant, Spectrum Southeast, LLC, a **Petition to Determine Just and Reasonable Terms and Conditions for Pole Attachment Agreement Pursuant to S.C. Code Ann. § 58-9-3030** in the above-referenced matter.

If you have any questions, please do not hesitate to contact me.

Respectfully,

WILLOUGHBY & HOEFER, P.A.


Mitchell Willoughby

Enclosures

cc: S.C. Office of Regulatory Staff (c/o Nannette Edwards, Executive Director)
via hand-delivery

York Electric Cooperative, Inc. (c/o Paul Basha, President & CEO)
via certified mail

OFFICES:

COLUMBIA | 930 RICHLAND STREET, COLUMBIA, SC 29201 | 803.252.3300 | FAX 803.256.8062
CHARLESTON | 133 RIVER LANDING DRIVE, SUITE 200, CHARLESTON, SC 29492 | 843.619.4426 | FAX 843.619.4490

ACCEPTED FOR FILING - 2022 May 20 10:45 AM MS SCSSC 2022-188-EC - Page 4 of 48

**BEFORE THE
PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2022-_____**

SPECTRUM SOUTHEAST, LLC,)	
)	
Complainant,)	PETITION TO DETERMINE
)	JUST AND REASONABLE
v.)	TERMS AND CONDITIONS FOR
)	POLE ATTACHMENT
YORK ELECTRIC COOPERATIVE,)	AGREEMENT PURSUANT TO
INC.,)	S.C. CODE ANN. § 58-9-3030.
)	
Respondent.)	
)	

Pursuant to the South Carolina Broadband Accessibility Act, S.C. Code Ann. § 58-9-3000, *et seq.*, and the Rules and Regulations of the Public Service Commission of South Carolina (“Commission”), including Rule 103-825 thereof, Spectrum Southeast, LLC (“Charter”), files this Petition to challenge the unlawful clearance requirements that Respondent York Electric Cooperative, Inc. (“York”), has sought to impose on it under a new pole attachment agreement. In support of this Petition, Charter alleges as follows:

INTRODUCTION

1. In this Petition, Charter asks the Commission to answer a limited, but critical legal question under South Carolina’s recently adopted Broadband Accessibility Act (“BAA”) – whether an electric cooperative pole owner may deny access to its poles based on construction requirements that exceed those of the National Electric Safety Code

(“NESC”).¹ Charter believes the answer to this question is “no,” based on the express language of the BAA.

2. South Carolina passed the BAA to address the serious lack of broadband service in rural South Carolina. S.C. Code Ann. § 58-9-3000. Indeed, the Federal Communications Commission (“FCC”) estimates 650,000 South Carolinians do not have access to broadband internet.² The COVID-19 pandemic only highlighted the need for broadband, as South Carolina saw “higher demands for virtual education and telemedicine, as well as more people working from home.”³

3. As a result, South Carolina moved swiftly to invest billions of dollars to expand access to broadband service through the BAA. S.C. Code Ann. § 58-9-3000. In passing the BAA, Representative Cezar McKnight noted, “[t]he future economic success of this state is directly linked to how much access to broadband we have in South Carolina.”⁴ As Governor McMaster observed, the BAA “is going to have ramifications for years . . . [t]his is just going to make it a little bit closer, in terms of education, in terms of medicine, in terms of business – this is going to open things up.”⁵ In addition to the

¹ As explained in further detail below, the NESC is the nationally-recognized, industry standard governing the safe installation, maintenance, and operation of overhead electric and communications lines.

² Joseph Bustos, *Legislators Aim To Get More SC Residents Access By Passing Broadband Bill*, THE STATE (Sept. 24, 2020), <https://amp.thestate.com/news/politics-government/article245959505.html>.

³ *Id.*

⁴ *Supra* note 2; see S.C. Code Ann. § 58-9-3000 (recognizing “the lack of broadband facilities in certain areas deprives citizens residing in those areas from access to opportunities”).

⁵ Bobby Bryant, *Broadband Plan Could Plug In Entire Pee Dee*, NEWS AND PRESS (Nov. 25, 2020), <https://www.newsandpress.net/broadband-plan-could-plug-in-entire-pee-dee/>.

financial investments, the state leaders also recognized the need to establish regulatory policies that would serve to enable and incentivize further broadband deployment. Senator Luke Rankin explained, “[o]ur goal is to try to incentivize capital investment in the state by defining payment for those who are not in the business, (and) who would want to access poles that are existing to run wire, instead of burying cable.”⁶

4. This dispute arises under the auspices of the BAA and out of Charter’s effort to negotiate a new pole attachment agreement with York to provide broadband service to South Carolina, on just and reasonable rates, terms, and conditions, in compliance with the BAA. *See* S.C. Code Ann. § 58-9-3030 (providing that electric cooperatives “must offer just, reasonable, and nondiscriminatory rates, fees, charges, terms, and conditions” for pole attachments). As discussed in detail below, the BAA’s text expressly provides that pole owners may not exceed the requirements of the NESC, pursuant to an attacher’s request for access. Indeed, a contrary interpretation would frustrate the General Assembly’s clear intent and undermine the statute’s overriding policy objective: “promot[ing] the efficient deployment of broadband facilities” and “facilitating access to broadband services in unserved areas throughout the State.” *Id.* § 58-9-3000(7) and (9).

5. For decades, Charter and its predecessors-in-interest have relied on access to York’s poles to provide communications services to South Carolina residents and businesses throughout the utility’s service area. Up until South Carolina passed the BAA, York could demand any contract term as a condition of access – including unreasonable clearance requirements – and Charter had little choice but to accept them with little (if any)

⁶ *Supra* note 2.

negotiation. The parties' current agreement was signed in 2004 with a term of three years, and has renewed automatically every year thereafter.

6. After South Carolina enacted the BAA to promote timely and efficient broadband deployment, particularly in rural areas, Charter sought to negotiate a new pole attachment agreement with York that reflected the statute's important provisions that ensure Charter's access to poles on just and reasonable terms. An agreement based on the BAA's reasonable new legal requirements is particularly critical for Charter as it actively undertakes to expand its broadband network to currently unserved areas of South Carolina in accordance with the FCC's Rural Digital Opportunity Fund ("RDOF") program and various state and local broadband deployment awards in South Carolina that contain specified timeframes to complete construction.⁷

⁷ Charter's ability reasonably to resolve whether a pole owner may impose clearance requirements that exceed the NESC may impact Charter's ability to implement other South Carolina programs designed to spur broadband in rural and underserved areas. For example, Charter has established broadband deployment agreements including locally funded construction subsidies with Florence, Darlington, Cherokee, Spartanburg, and Dillon counties to provide broadband to more than 10,000 South Carolinians in the next year and half to three years. Charter is also investing \$250 million in South Carolina broadband buildout, in addition to the \$112 million it obtained in RDOF support. Charter Communications, *A \$362 Million Initiative To Expand Broadband Availability to Unserved South Carolina Homes and Small Businesses* (Mar. 3, 2021), <https://policy.charter.com/RDOF-South-Carolina-Initiative>; see also *Spectrum Brings Its State-Of-The-Art Network With Gigabit Broadband And New TV Choices To York County, WHO'S ON THE MOVE* (May 4, 2022), <https://whosonthemove.com/spectrum-brings-its-state-of-the-art-network-with-gigabit-broadband-and-new-tv-choices-to-york-county/> (noting Charter aims to bring service to nearly 6,000 homes and small businesses in York by the end of the year). As noted by South Carolina's lawmakers, "investment from Charter will help our state . . . bring high-speed connectivity to thousands of previously unserved residents – supporting their educational and economic success." *Id.* (quoting Senate Finance Committee Chairman Hugh Leatherman). "The long-term impact of Charter's expansion will be transformational." *Id.* But in order for Charter to meet its buildout goals, it must have just and reasonable access to poles.

7. In the context of South Carolina's new broadband policy framework, over the course of approximately six months, the parties were able to reach tentative agreement on nearly all provisions of a new agreement, including the annual rental rate, pole access timeframes and processes, pole replacement cost allocation, overloading, inspections, and dispute resolution protocols, among other areas.

8. Unfortunately, the parties' negotiations ultimately reached an impasse over York's insistence that Charter attach its cables at 84 inches – or 7 feet – below York's neutral conductors, while also maintaining a mid-span clearance over the ground of 18 feet. The typical clearances, based on the NESC, are far less, as described below. In response, and despite Charter's strong, contrary interpretation of the statute, as a means to prevent any further delay and to accommodate York's request, Charter offered a business resolution to this dispute: Charter told York it would agree to its 84-inch clearance requirement provided that York did not require Charter to pay any necessary make ready costs to achieve that clearance. But at that point, York refused to negotiate any further, demanding that Charter either accept its construction requirements or York would walk away from the negotiations and all the other terms the parties had negotiated and agreed to.

9. York's clearance requirements are directly at odds with the BAA's express language, which prohibits a pole owner from denying access where it is "not prohibited by the National Electric Safety Code." S.C. Code Ann. § 58-9-3030(A). The NESC, which, as its name suggests, sets forth *the* national standards for safe electrical and communications construction on poles, requires that the clearance between the electrical neutral and the closest communications facility on the pole at 40 (*not 84*) inches, and mid-span clearance over the ground at 15.5 (*not 18*) feet. York's imposition of requirements

far in excess of the NESC flout the state's law, cannot be based on any reasonable need for safety or sound engineering, and make it much more time consuming and costly for Charter to access York's poles for broadband deployment.

10. The consequences of York's deviation from the NESC are no mere technical matter presenting only theoretical problems. Allowing York to apply its excessive clearance requirements would effectively operate to unreasonably deny Charter access to York's poles and thereby subvert the policy goals of the BAA – to facilitate and promote fast and efficient broadband deployment in unserved areas that remain without adequate broadband. In fact, if York is permitted to impose these excessive and unreasonable requirements, Charter would not be able to access York's poles as intended by the BAA: in a cost-effective and efficient manner. The application of these extreme construction standards could force Charter to pay to replace more of York's poles than would otherwise be necessary under the NESC standards, dramatically raising Charter's cost of deployment, and causing significant delays in accessing poles and deploying broadband services.⁸ If Charter cannot access poles on a timely and cost-effective basis, it may have no reasonable means by which to deploy broadband to the unserved South Carolinians.⁹

⁸ By demanding clearance standards well in excess of NESC requirements, York is seeking a financial windfall in the form of significant pole infrastructure improvements at the expense of timely and efficient broadband infrastructure deployment (it takes much more time to replace a pole than it takes to merely rearrange facilities on poles to make room for a new attachment). This unnecessary requirement and result is precisely what the BAA was designed to combat. *See* S.C. Code Ann. 58-9-3030(A) ("An electric cooperative shall provide communications service providers . . . with nondiscriminatory access in offering or granting rights to install or attach any attached facilities . . . and must offer just, reasonable, and nondiscriminatory rates, fees, charges, terms and conditions").

⁹ In some instances, Charter may be able to use underground construction in lieu of attaching its facilities to poles. But underground construction is considerably more expensive (generally three times as much), may require additional permitting (*e.g.*, from governmental authorities) and an environmental review, takes longer to complete, and most

11. To address York’s inappropriate conduct, and ensure that other similarly-situated electric cooperatives do not obstruct or delay broadband deployment through the imposition of excessive and unlawful clearance requirements, the Commission should affirm that the clear language of the statute prevents pole owners from denying attachment rights where Charter seeks to access poles in compliance with the NESC. While Charter believes that the BAA’s access standard involving the NESC is evident based on the unambiguous statutory language, and furthers the statute’s purpose, a clear determination from the Commission on this legal point will resolve this dispute, and allow Charter to deploy broadband in a timely and cost-effective matter, as envisioned by the BAA. In addition, such a determination will provide much needed guidance to other pole owners and attachers regarding appropriate pole attachment terms and conditions under the BAA, particularly with regard to which construction standards are legal and appropriate.

PARTIES

12. Charter is a franchised cable operator under federal law, 47 U.S.C. § 522(5), and a communications service provider under state law, S.C. Code Ann. §§ 58-9-3010(8) & 58-9-2610(B). Charter provides communications services – cable, video, mobile, broadband internet access, and digital voice – to residents and businesses across South Carolina. To provide its services in a cost-effective and timely manner, Charter must attach

importantly, is not an option in certain situations because of geographic conditions (involving soil or rock) and environmental restrictions, such as prohibitions against soil disruption and wetland regulations. *See, e.g., Joseph Bustos, Legislators Aim To Get More SC Residents Access By Passing Broadband Bill, THE STATE* (Sept. 24, 2020), <https://amp.thestate.com/news/politics-government/article245959505.html> (Senator Rankin explaining “[r]unning lines underground could take longer to achieve and is more expensive for telecom companies”).

its facilities to existing utility poles in South Carolina, including poles owned by York and other electric cooperatives.¹⁰

13. Charter is a Delaware limited liability company with its principal headquarters 400 Washington Street, Stamford, Connecticut, 06901. Its authorized representatives in this proceeding, to whom all notices, pleadings, correspondence, and other documents relating to this proceeding should be directed, are:

Mitchell Willoughby
Andrew D'Antoni
WILLOUGHBY & HOEFER, P.A.
P.O. Box 8416
Columbia, SC 29202
(803) 252-3300
mwilloughby@willoughbyhoefer.com
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14. Charter consents to electronic service in this proceeding.

15. Respondent York Electric Cooperative, Inc., is an electric cooperative organized in South Carolina that operates under the provisions of Title 33, Chapter 49 of the South Carolina Code of Laws. *See* S.C. Code Ann. § 58-9-3010(10). York owns or

¹⁰ Charter's affiliate, CCO Holdings, LLC, was the entity that received federal Rural Digital Opportunity Fund ("RDOF") funding for South Carolina. Charter itself is also a party to a number of state and local broadband deployment agreements and is the owner of the facilities and the entity tasked with entering any necessary pole agreements, as well as building out and operating RDOF-supported facilities.

controls poles in the areas where it provides service in South Carolina, including in the counties of Cherokee, Chester, Lancaster, and York. York's principal office is located at 1385 East Alexander Love Highway, P.O. Box 150, York, South Carolina 29745.

JURISDICTION

16. The Commission has jurisdiction over this matter. Pursuant to Section 58-9-3030(A)(2) of the BAA, a communications service provider and electric cooperative "must negotiate in good faith for at least sixty days" after a written request by the communications service provider to negotiate a pole attachment agreement. If the parties' negotiations are unsuccessful, "either party may petition the commission to determine just and reasonable rates, terms, and conditions for the agreements." S.C. Code Ann. § 58-9-3030(A)(2); *see also id.* § 58-9-3030(F). The Commission must make its determination within 180 days of the filing of the petition. *Id.* § 58-9-3030(A)(2).

17. On October 11, 2021, Charter sent York a written request to negotiate a new pole attachment agreement pursuant to S.C. Code Ann. § 58-9-3030(A)(2). *See* Exhibit ("Exh.") A.

18. The parties subsequently negotiated for six months – far more than the required sixty days – during which time they were able to reach agreement on all issues but one. *See* Exh. B (Email correspondence between C. McDonald, P. Werner, and A. Shanedling regarding pole attachment agreement negotiations). Their negotiations ultimately reached an impasse when York demanded Charter comply with York's excessive and unlawful clearance requirements, in exchange for an agreement, and refused to accept a reasonable compromise. *See id.* (stating "York has conditionally agreed to make concessions sufficient to satisfy every item on your list except clearances"). If

Charter refused to accept that term, York also threatened it would walk away from the negotiating table and take all of the other agreed terms with it.

19. Faced with this impossible choice – agree to an unlawful term in a new agreement that undermines its reliance on the BAA to timely and efficiently deploy broadband in rural areas of the state *or* live with an agreement entered before the BAA was even enacted – Charter now respectfully brings this Petition for relief. Charter therefore specifically requests the Commission to determine just and reasonable rates, terms, and conditions to govern “the attachment or placement of facilities, after the date of [Charter’s] written request, by [Charter] on or in the existing or new poles or structures of the electric cooperative,” York. *See* S.C. Code Ann. § 58-9-3030(A)(2).

20. In doing so, Charter asks the Commission to resolve a single, disputed legal issue and confirm that a pole owner may not, as York has insisted, deny an attacher access to its poles by imposing any construction standard that exceeds the NESC.

BACKGROUND

South Carolina Law And Policy Promote Timely And Efficient Broadband Deployment

21. Broadband providers must, of necessity, rely on existing utility poles like those owned and operated by York to construct and operate their broadband networks. Indeed, it is impractical (and in many cases impossible) and contrary to public policy to allow more than one set of poles in the public right of way.¹¹

¹¹ *See, e.g., supra* n. 9; *So. Co. v. FCC*, 293 F.3d 1338, 1341 (11th Cir. 2002) (“As a practical matter, cable companies have had little choice but to” attach “their distribution cables to utility poles owned and maintained by power and telephone companies” because the cost of constructing a new system is “insurmountable”); *see also FCC v. Florida Power Corp.*, 480 U.S. 245, 247 (1987) (observing, “[c]able television operators, in order to deliver television signals to their subscribers, must have a physical carrier for the cable; in

22. Because access to these poles is essential to a broadband provider's ability to construct, operate, and expand its network, pole owners, like York, which have exclusive ownership and control over these critical assets, hold virtually all of the bargaining power when negotiating pole attachment agreement rates, terms, and conditions,¹² especially prior to passage of the BAA when South Carolina cooperatives were not subject to any pole regulation. In the absence of regulation, pole owners historically have abused their "superior bargaining power" to impose unreasonable rates, terms, and conditions on communications providers for access to essential pole facilities.¹³

23. Courts, legislative bodies, and administrative agencies have long acknowledged – and sought to remediate – this imbalance of negotiating power between pole owners and attachers, by passing laws and regulations. Without such regulations, the pole owner's leverage in negotiations can undermine important public policies of

most instances, underground installation of the necessary cables is impossible and impractical. Utility compan[ies'] poles provide, under such circumstances, virtually the only practical medium for the installation of television cables"); *Ga. Power Co. v. Teleport Commc'ns Atlanta, Inc.*, 346 F.3d 1033, 1036 (11th Cir. 2003) (noting "lack of alternatives to these existing poles"); *So. Co. Servs., Inc. v. FCC*, 313 F.3d 574, 576-77 (D.C. Cir. 2002) ("Since building new poles was prohibitively expensive, cable operators instead leased existing space from utilities . . .").

¹² See, e.g., *TCA Management Co. et al. v. Southwestern Public Service Company*, 10 FCC Rcd. 11832, ¶ 15 (1995) ("In enacting Section 224 [the federal Pole Attachment Act], Congress recognized the utilities' superior bargaining power in pole attachment matters.").

¹³ *Heritage Cablevision Assocs. of Dallas, L.P. v. Tex. Utils. Elec. Co.*, 6 FCC Rcd. 7099, ¶ 14 (1991) (When passing the federal Pole Attachment Act, "Congress was concerned with abusive conduct by the utilities. For example, the relevant Senate report refers to testimony received in committee concerning: 'the local monopoly in ownership or control of poles' by the utilities; the 'superior bargaining position' enjoyed by utilities over cable operators in negotiating rates, terms and conditions for pole attachments; and allegations of 'exorbitant rental fees and other unfair terms' demanded by the utilities in return for the right to lease pole space. As the Senate report and case law bear out, Congress clearly acted to protect cable operators from anticompetitive conduct by utilities.") (internal citation omitted)).

increasing deployment of advanced communications services and the vast social welfare benefits they unlock.¹⁴

24. The passage of the BAA demonstrates the South Carolina General Assembly similarly recognized that electric cooperatives have exercised their superior bargaining power over attachers in ways that have impeded efficient broadband deployment and undermined the welfare of the state. *See* S.C. Code Ann. § 58-9-3030(A). The BAA addresses this problem directly and in no uncertain terms when it states that “[a]n electric cooperative . . . must offer just, reasonable, and nondiscriminatory rates, fees, charges, terms, and conditions for [pole attachments] to communications service providers.” *Id.*; *see also* S.C. Code Ann. § 58-9-3000(B)(3) (stating with the passage of the BAA, “the General Assembly intends to . . . ensur[e] that appropriate protections are in place to ensure that electric cooperative do not have an unfair competitive advantage over other broadband service providers”).

25. Those mandated just and reasonable rates, terms, and conditions include, among other things, compliance with the FCC’s access timeframes and other access requirements, which are incorporated into the BAA. *See id.* § 58-9-3030(B)(1) (citing 47 C.F.R. § 1.1411). Including these timeframes in the BAA represents a clear effort by the General Assembly to reduce the time and expense for making pole attachments in South Carolina.¹⁵

¹⁴ *See, e.g., So. Co. v. FCC*, 293 F.3d at 1341 (explaining “Congress recognized, however, that utilities would lose the incentive to voluntarily enter into pole attachment agreements with telecommunications and cable television companies that were now their competitors. Congress thus added a ‘nondiscriminatory access’ provision to the Pole Attachments Act,” reflecting “Congress’s decision to regulate this relationship”).

¹⁵ *See In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Inv.*, 33 FCC Rcd. 7705 (2018) (revising 47 C.F.R. § 1.1411 “to

26. The BAA also prohibits utilities from denying access based on construction standards that exceed the NESC, which is the subject matter of the instant case. Specifically, the BAA requires electric cooperatives to allow access to their poles when “not prohibited by the National Electric Safety Code.” *Id.* § 58-9-3030(A)(1); *see also id.* 58-9-3030(D)(2) (requiring an electric cooperative and pole attacher “to fully comply with [NESC] requirements for electric infrastructure attachments”). Mandating a uniform NESC standard for pole attachments is both consistent with the plain language of the BAA and furthers the statute’s clear intent to promote speed, efficiency, and fairness to facilitate broadband deployment in rural areas. *Id.* § 58-9-3000(B)(4) (explaining broadband “development is vital and necessary to induce, create, and promote industrial and economic development and to create job opportunities, enhance health care, and enhance educational advancement in the State”).¹⁶

27. Under the BAA, if parties cannot reach agreement following a 60-day negotiation period, they may petition the Commission, which has authority to resolve disputes over pole attachment rates, terms, and conditions. *Id.* § 58-9-3030(A)(2).

promote broadband deployment by speeding the process and reducing the costs of attaching new facilities to utility poles”).

¹⁶ *See also* Jeffrey Collins, *Roads, Broadband Part of SC House’s \$1.8B COVID Relief Plan*, ASSOCIATED PRESS (Feb. 16, 2022), <https://www.usnews.com/news/best-states/south-carolina/articles/2022-02-16/roads-broadband-part-of-sc-houses-1-8b-covid-relief-plan?msclkid=f6c4af68c7d111ec846a01f572428620> (stating South Carolina has set aside \$400 million “for expanding broadband internet into rural areas”); Joseph Bustos, *Legislators Aim To Get More SC Residents Access By Passing Broadband Bill*, THE STATE (Sept. 24, 2020), <https://amp.thestate.com/news/politics-government/article245959505.html> (Luke Rankin, R-Horry, explaining “[o]ur goal is to try to incentivize capital investment in the state by defining payment for those who are not in the business, (and) who would want to access poles that are existing to run wire, instead of burying cable”).

28. In exercising this new jurisdiction and authority, the Commission “must make such determination within one hundred eighty days of the filing of the petition for that determination and the commission’s determination must apply retroactively to all facilities attached or placed between the date of the written request to negotiate and the date of the commission’s determination.” *Id.*

***The NESC Provides The Industry Standards For
Safe Utility Pole Construction***

29. The NESC is the nationally-recognized, industry standard governing the safe installation, maintenance, and operation of overhead and underground electric supply and communications lines.¹⁷ This view is shared by the South Carolina Supreme Court. *See Foreman v. Atl. Land Corp.*, 245 S.E.2d 609, 610 (S.C. 1978) (“While [the NESC] has no legislative sanction, it is difficult to conceive a better test of care than compliance with its provisions”).¹⁸ This view is also shared by the South Carolina Department of Transportation (“SCDOT”), which mandates that utility infrastructure within SCDOT rights-of-way conform with NESC construction standards. *See SCDOT Utilities Accommodation Manual* (Mar. 2019) at ¶ 6.2 (providing that “[e]lectric power and

¹⁷ INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS, INC., NATIONAL ELECTRICAL SAFETY CODE 1 (2017 ed. 2016) (stating “NESC rules are globally recognized and intended to provide a practical standard of safe practices that can be adopted by public utilities, state or local utility commissions or public service commissions, or other boards or bodies having control over safe practices employed in the design, installation, operation, and maintenance of electric supply, communications, street and area lighting, signal, or railroad utility facilities”).

¹⁸ The BAA gives the NESC the “legislative sanction” that the South Carolina Supreme Court noted was lacking in the *Foreman* case at the time the opinion was issued. Thus, it is reasonable to assume that South Carolina’s Supreme Court, if confronted with the application of the NESC to pole attachments under the BAA, would have even stronger grounds to find that compliance with its provisions is the appropriate standard for pole attachments.

communications facilities *shall conform to the [NESC], latest edition*” within SCDOT rights-of-way) (emphasis added)). Among other things, the NESC sets forth specific clearance standards for the safe and proper construction of electric and communications facilities.¹⁹

30. Because the NESC provides industry standards for safe construction on poles – a fact recognized by both the South Carolina Supreme Court and SCDOT – the General Assembly sensibly and appropriately adopted the NESC as its safety standard, and incorporated it expressly into the BAA. *See* S.C. Code Ann. §§ 58-9-3030(A)(1), 58-9-3030(D)(2) & 58-9-3010(4). Specifically, Section 58-9-3030(A) of the BAA states that a pole attacher’s right of access “includes the right to nondiscriminatory use of all easements and rights of way and to all poles, ducts, conduits *to the extent not prohibited by the National Electric Safety Code.*” *Id.* § 58-9-3030(A)(1) (emphasis added). In other words, an attacher has a positive statutory right to access a pole unless doing so is not possible under the NESC.

31. Reinforcing that express right, the BAA further provides that “[a] communications service provider that has attached, or applied to attach, facilities on electric cooperative infrastructure . . . must cooperate with the owner of the pole and all other attaching entities in good faith *to fully comply with National Electric Safety Code*

¹⁹ INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS, INC., NATIONAL ELECTRICAL SAFETY CODE Tables 235-5 & 232-1 (2017 ed. 2016) (permitting communications cable attachments 40 inches from [electric] neutral conductor and requiring mid-span clearance of 15.5-16 feet above the ground); *see id.* at 160 (stating the limited and specific instances in which vertical clearances greater than those provided in Table 235-5 are required); *see also* DAVID J. MARNE, P.E., NATIONAL ELECTRICAL SAFETY CODE 2017 HANDBOOK 273 & 210 (Michael McCabe et al. eds., 2017).

requirements for electric infrastructure attachments.” *Id.* § 58-9-3030(D)(2) (emphasis added).

32. In the same vein, the BAA even defines “Broadband Network” with specific reference to the NESC:

“Broadband network” means any and all infrastructure, equipment, materials, or component parts thereof that may be used to provide landline or wireless broadband service, whether now existing or that may be developed in the future including, but not limited to, wires; cables, including fiber optic and copper cables; conduits *to the extent not prohibited by the National Electric Safety Code*; antennas; equipment; fixtures; switching multiplexers; poles; routers; switches; servers; appurtenances; facilities; or other equipment, whether ancillary, auxiliary, or otherwise used to facilitate the provision of landline or wireless broadband service.

Id. § 58-9-3010(4) (emphasis added).

33. The General Assembly’s intent with its express references to the NESC could not be clearer: the BAA prohibits an electric cooperative from denying access to its poles if an attachment can safely be installed in compliance with NESC standards. Nowhere does the BAA remotely imply that electric cooperatives are free to impose safety or engineering standards other than those mandated by the NESC.

34. That silence is telling. If the General Assembly intended to permit electric cooperatives to have discretion to impose rules that exceed the NESC, it could and would have done so expressly.²⁰ But the General Assembly did not. That decision must be understood as intentional, and the words the General Assembly actually used must be given

²⁰ Unlike the General Assembly, other states have passed laws and regulations that allow pole owners to supplement the NESC with their own standards. *See, e.g.*, Ark. Pub. Serv. Comm’n Pole Attachment Rules, R. 3.01(a)(1) (requiring attachers to install and maintain attachments in compliance with “[t]he current edition of the NESC and NEC in effect at the time of construction and the Pole Owner’s applicable engineering standards related to safety and reliability in effect at the time of construction”).

their plain and ordinary meaning. *See Aiken v. S.C. Dep't of Revenue*, 839 S.E.2d 96, 99 (S.C. 2020) (“What the General Assembly says in the text of the statute is the best evidence of its intent.”) (citing *Hodges v. Rainey*, 533 S.E.2d 578, 581 (S.C. 2000)); *McGill v. Univ. of S.C.*, 423 S.E.2d 109, 111 (S.C. 1992) (“[I]n construing a statute its words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.”). The BAA’s statutory meaning is clear: electric cooperatives may not deny access to a pole when an attachment can be made in compliance with the NESC, not any other standard. In other words, an attacher has a right to attach to a pole *unless* the attachment would be *prohibited* by application of the NESC.

35. The General Assembly’s decision to allow access “where not prohibited by the NESC” makes sense and promotes the goals of the BAA. The NESC provides objective, well established, and industry-accepted rules to ensure communications facilities are constructed and maintained safely. If electric cooperatives were permitted to impose shifting, arbitrary, excessive, and even anticompetitive standards on attachers, those standards could, as this case makes clear, deter and needlessly increase the costs of broadband deployment – in direct conflict with the important public policies animating the BAA.

***During Negotiations For A New Pole Attachment Agreement,
York Demanded That Charter Agree To Construction Standards That Exceed The
NESC In Violation Of The BAA***

36. Charter and its predecessors in interest have relied on access to poles owned by York to deliver communications services for many decades. Today, Charter is attached to approximately 4,000 poles owned and controlled by York.

37. Charter's ability to efficiently and effectively deploy its network is critically dependent on reasonable pole attachment rates, terms, and conditions. Non-uniform, discriminatory, and excessive construction standards can radically increase the time and costs of deployment, impacting an attacher's (like Charter's) decision on if, how, where, and when to expand its broadband network.

38. On October 11, 2021, Charter wrote to York requesting negotiation of a new pole attachment agreement. Exh. A. Charter explained that the parties' existing agreement, which was signed by the parties in 2004 for an initial term of three years and automatically renewed each year thereafter, was outdated and did not comply with the newly-adopted BAA in critical respects.

39. In response to Charter's written request, the parties negotiated over the next six months, and were able to reach tentative agreement on all of the pertinent rates, terms, and conditions. For example, the parties agreed on an annual, per-pole attachment rate, access timeframes and other access process requirements, key definitions (such as make ready costs), allocation of pole replacement costs, and processes for overloading, inspections, and dispute resolution. *See* Exh. B.

40. But the parties failed to agree on a critical issue that is the subject matter of this dispute: whether York was legally permitted to impose on Charter construction standards that exceed the NESC if the application of those standards would result in unreasonable access denials and/or make-ready costs. In other words, if Charter's access to a York pole would be possible under the NESC, but not under York's heightened standards, is York legally permitted to apply those excessive standards?

41. York sought to require Charter to attach its cables 84 inches below the electrical neutral, and maintain a mid-span clearance over the ground of 18 feet, even though the NESC only requires Charter to attach 40 inches from primary neutral conductors and only 15.5 - 16 feet above the ground. *See* Inst. of Elec. & Electronics Eng'rs, Inc., *National Electric Safety Code*® at Tables 232-1 and 235-5 (2017 ed.).

42. Charter could not agree to York's excessive clearance requirements because they violate the BAA, which expressly prohibits utilities from denying pole access except where access would not be possible under the NESC. The imposition of York's standards would inevitably lead to more poles needing to be replaced (which Charter would be required to pay for) or outright denial of pole attachment permit applications, even when access was clearly allowed under NESC rules.

43. York's excessive clearance requirements also undermine the core purpose of the BAA: to promote timely and efficient deployment of broadband. If York were allowed to impose its excessive requirements, Charter could be forced to underground its facilities, which as discussed above, is typically much costlier, time-consuming, and less efficient than aerial deployment. In many situations, undergrounding facilities is not even reasonably available.²¹ Application of these standards would also prevent Charter from enjoying its rights under the BAA on just and reasonable rates, terms and conditions.

44. The Commission should declare, based on the plain language of the statute, as well as its purpose, that electric cooperatives may not deny access to poles where an attachment meets the NESC. The impositions of standards more onerous than the NESC's

²¹ *Supra* notes 9 & 11.

violates the BAA, countermands is core policy imperative, and are unnecessary to address any reasonable safety needs.

45. The Commission's decision on this discrete issue will impact current and future investment in broadband deployment to unserved areas across the state, not only with respect to Charter, but also with respect to all other broadband providers subject to the BAA. Additionally, a definitive ruling reinforcing the BAA's clear terms will prevent other cooperative utilities from taking similarly unlawful positions in pole attachment agreement negotiations and set a clear standard for resolution of future disputes where a pole owner wants to force an attacher to accept a standard that exceeds the requirements of the NESC. Accordingly, the Commission should confirm that pole attachers have a right under the BAA to attach their facilities "to the extent not prohibited by the National Electric Safety Code." S.C. Code Ann. 58-9-3030(A).

PRAYER FOR RELIEF

46. WHEREFORE, Charter respectfully requests that the Commission:

- (1) Confirm that the BAA prohibits electric cooperatives from denying pole access based on construction standards that exceed the NESC; and
- (2) Award Charter any and all additional relief that the Commission deems just and proper.

Dated: May 19, 2022

Respectfully Submitted,

s/Mitchell Willoughby

Mitchell Willoughby (S.C. Bar No. 6161)

Andrew D'Antoni (S.C. Bar No. 100919)

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Motions for Admission Pro Hac Vice Forthcoming

Attorneys for Spectrum Southeast, LLC

EXHIBIT A

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October 11, 2021

VIA ELECTRONIC MAIL & FIRST CLASS U.S. MAIL

Craig Spencer
Vice President of Engineering
York Electric Cooperative, Inc.
P.O. Box 150
York, SC 29745
craig.spencer@yorkelectric.net

Re: Request To Negotiate New Pole Attachment Agreement and Process Pole Applications As Required By Law

Dear Mr. Spencer:

I write on behalf of Spectrum Southeast, LLC (formerly Time Warner Entertainment-Advance/Newhouse Partnership) ("Spectrum"), pursuant to the South Carolina Broadband Accessibility Act ("Act"), to request negotiation of a new pole attachment agreement with York Electric Cooperative, Inc. ("York").¹

The parties' current agreement (entered Jan. 1, 2004) is outdated and fails to comply with the Act in several critical respects. For example, while the contract includes what Spectrum considers to be excessive and unnecessary construction standards – such as requiring attachments maintain a minimum 18 foot clearance height at *any* mid-span and also be a minimum of 7 feet from York's primary neutral conductors – the Act forbids a pole owner from imposing standards that exceed the National Electrical Safety Code. S.C. Code §§ 58-9-3030(A) & (D)(2).

Moreover, separate and apart from any current contract provisions, the Act requires cooperative pole owners to treat all attachers in a nondiscriminatory manner, including offering “nondiscriminatory rates, fees, charges, terms, and conditions for attached facilities.” *Id.* §§ 58-9-3030(A) & (C)(1). However, Spectrum is concerned that York may be affording other attachers, including its affiliate Comporium, more favorable standards for broadband deployment, and seeks to ensure a new agreement provides non-discriminatory terms.

I also understand that York is refusing to allow Spectrum to submit applications with more than 25 poles per week and has denied Spectrum's reasonable request to increase that limit for certain

¹ See S.C. Code § 58-9-303(A)(2) (providing “a communications service provider may submit to an electric cooperative a written request to negotiate agreements addressing the attachment or placement of facilities . . . by the communications service provider on or in the existing or new poles or structures of the electric cooperative” and that the “[t]he parties must negotiate in good faith for at least sixty days after the written request”).

areas.² While the parties' current pole attachment agreement is silent as to any limits on the number of poles that must be processed in a timely manner, please be advised that Section 58-9-3030(B)(1) of the Act requires cooperatives to comply with the timeframes/pole counts set forth in 47 C.F.R. § 1.1411, which are the Federal Communications Commission's ("FCC") "access" regulations. S.C. Code § 58-9-3030(B)(1).³ Specifically, pursuant to 47 C.F.R. § 1.1411(g), a pole owner is required to process the lesser of 300 poles or 0.5% of the pole owner's poles in the state. For a pole owner that owns more than 50,000 poles (like York), that means York is required to process at least 250 poles every 45 days (or 2,500 poles within 60 days).

York's unilateral and unlawful permit limitation is impeding Spectrum's Rural Digital Opportunity Fund network deployments and frustrating South Carolina's policy "to facilitate access to broadband services at all locations in the State" through the "efficient deployment of broadband facilities." S.C. Code § 58-9-3000(B)(4) & (7). Indeed, beyond the requisite timeframes, Section 58-9-3030(B)(1) of the Act states that "an electric cooperative shall not withhold authorization or delay its decision to provide authorization to a communications service provider to install, maintain, own, operate, or use the communications service provider's attached facilities on electric service infrastructure owned or controlled by the electric cooperative." York's unilateral permit limitation constitutes an unlawful delay and denial of authorization.⁴

* * *

In sum, Spectrum requests that York immediately (1) begin processing the mandatory number of poles, as per FCC regulations; (2) review Spectrum's attached template, which is drafted in accordance with the Act, so the parties may begin negotiations promptly; and (3) provide Spectrum with York's pole attachment agreement with Comporium, so that Spectrum can ensure nondiscriminatory treatment.⁵ Please be advised that Spectrum reserves all rights and remedies

² See Email from R. Lupinio (Spectrum) to C. Spencer (York) (Sept. 7, 2021 at 10:49 AM ET) ("Currently we are adhering to the 25 poles per application per week, but were wondering if that could be increased to 40 to 50 or even more if needed for certain areas."); Email from C. Spencer (York) to R. Lupino (Spectrum) (Sept. 7, 2021 at 1:37 PM ET) (rejecting Spectrum's request, stating "[w]e have discussed this possibility internally and we believe that until we get the kinks worked out of the application process we do not need to increase").

³ Section 58-9-3030(B)(1) of the Act requires that "[a]ll review by an electric cooperative of requests by a communications service provider to attach facilities, make-ready activities, and all pole or support structure replacement or expansions . . . shall be completed by the electric cooperative . . . *within the timeframes and other make-ready requirements set forth in 47 C.F.R. Section 1.1411* under federal law for utilities subject to regulation by the FCC pursuant to the Federal Pole Attachments Act (47 U.S.C. Section 224) as it exists on September 15, 2020."

⁴ York has also appeared to withhold permit requests by Spectrum due to shifting requirements for what information must accompany a permit request. See Email from P. Quinn (York) to J. Graber (Charter) (Sept. 27, 2021 at 12:18 PM ET) (confirming that York has not approved permit requests Spectrum submitted on August 9, 24, and 30, 2021 because "[w]e need to receive the additional info requested before we review them"); Email from P. Quinn (York) to J. Graber (Charter) (Sept. 24, 2021 at 12:28 PM ET).

⁵ See S.C. Code § 58-9-3030(C)(1) ("An electric cooperative that provides any broadband facility or any broadband service that is not retail broadband service to a broadband affiliate or to any other person or

Craig Spencer
October 11, 2021
Page 3

in connection with this matter, including its rights to pursue administrative relief before the South Carolina Public Service Commission under Section 58-9-3030(A)(2)) of the Act.

We look forward to hearing from you soon.

Best regards,

A handwritten signature in blue ink, appearing to read 'Paul Werner', followed by a vertical line.

Paul Werner
Abraham J. Shanedling
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Enclosure

cc:

Philip Quinn, philip.quinn@yorkelectric.net

Ben Jones, ben.jones@yorkelectric.net

SMRH:4833-1906-6366.1

entity must do so pursuant to a written contract, *at market rates, and on terms and conditions that are not harmful to competition.*" (emphasis added)).

EXHIBIT B

From: Chris McDonald <cmcdonald@tienckenlaw.com>
Sent: Tuesday, March 8, 2022 1:32 PM
To: Paul Werner; Abraham Shanedling
Cc: Karen Hallenbeck; Hannah Wigger
Subject: RE: York Electric Cooperative - your correspondence of 10/11/2021

Paul,

I have spoken with our client. Your proposal is not acceptable, as it effectively renders York's clearance rules a nullity. I will once again reiterate that our interpretation of BAA Section 58-9-3030(A) and (D) differs substantially from yours: per our first correspondence to you dated November 3, 2021 and as we have discussed on numerous occasions since, "[W]e believe that your client's position more generally represents a misreading of the Act. The references to the NESC in S.C. Code Ann. §§ 58-9-3030(A) and (D)(2) provide minimum standards for coverage under the BAA; they do not... prohibit cooperatives from maintaining standards more rigorous than the NESC's" so long as those standards are reasonable and applied on a nondiscriminatory basis. York is confident that, under the circumstances, its rules satisfy those criteria.

York has been clear from the outset that it would seek to limit changes to its form pole agreement to those absolutely necessary for BAA compliance and for ensuring internal consistency once BAA modifications were incorporated. In service of getting a new agreement with your client inked, York conditionally agreed to several other changes outside the scope of BAA compliance, only then to recently receive indications from you and Abram that your client's intention was not actually to finalize an agreement, but rather to obtain one portion of the agreement from York and the other from the PSC. Thus, contrary to your assertion, it was eminently fair for York at that point to, once again, (1) state its own intentions and expectations clearly; and (2) request the same courtesy from your client. It is unfortunate that your client apparently remains unwilling to do this.

I will restate our question: does your client intend to file a petition with the PSC over the clearance issue (or any other issue) assuming the other six items summarized in Abram's March 1 email are resolved to your client's reasonable satisfaction in accordance with the agreements we have conditionally reached in principle? If the answer to that question is "yes," I am sure you can appreciate that it becomes a fairly useless exercise to continue with incorporation of compromises that York proposed in service of avoiding such a circumstance.

Your assertion that "the parties have not been able to negotiate [the issue of clearances] yet" is wholly inaccurate. Please refer to my email of January 14, 2022 at 2:27 p.m., in which I made the following proposal on York's behalf (I have also attached the email in full for your reference because it is not a part of this email chain):

Although YEC believes that its clearances are entirely reasonable and justifiable under the circumstances, they understand your client's concern regarding the cost burden of compliance with those rules. To address that concern, YEC asked me to propose the following as a potential compromise: YEC would retain the 18-foot ground clearance requirement but revert the primary neutral conductor clearance requirement to the NESC default. In exchange, an attacher would agree to maintain a deposit with YEC that it may then use to draw down to cover required maintenance, pole replacements, repairs caused by attacher noncompliance, etc. (the account would be subject to customary audit rights and draw notice provisions). YEC estimates that the deposit would be on the order of \$100,000. It would offer this option to each of its attachers in lieu of the more stringent clearance requirement.

By email dated January 21, 2022, Abram rejected York's proposed compromise on your client's behalf with no counterproposal. The above exchange, as well as probably a dozen others between counsel in writing and verbally since last fall, belie your statement that the parties have not yet "been able" to negotiate clearances.

In the spirit of transparency, let me once again be clear that every concession our clients have offered that is beyond the strict requirements of the BAA is conditioned upon our parties reaching a full agreement and moving forward with that agreement in good faith. However, if your client merely intends to use our negotiations as a springboard for filing a petition with the PSC, York will no longer be inclined to incorporate those out-of-scope concessions in a new agreement with Spectrum/Charter.

Thanks, Chris

From: Paul Werner <PWerner@sheppardmullin.com>

Sent: Monday, March 7, 2022 1:54 PM

To: Chris McDonald <cmcdonald@tienckenlaw.com>; Abraham Shanedling <AShanedling@sheppardmullin.com>

Cc: Karen Hallenbeck <khallenbeck@tienckenlaw.com>; Hannah Wigger <HWigger@sheppardmullin.com>

Subject: RE: York Electric Cooperative - your correspondence of 10/11/2021

Chris – With respect, I do not think your opening statement below – that we and our client can assess the agreement without a further draft from your client – is correct or fair, or even consistent with the parties' negotiations to date.

As you know, when we have proposed terms to you, we have done so concretely and in writing. It is only fair and reasonable that York afford our client the same courtesy. After all, this is a complicated agreement that, at this point, has been highly negotiated. In order to properly understand, evaluate, and make recommendations to our client, we need to know precisely what York is offering – rather than what it says it will agree to in concept.

Nor do we think it is fair or reasonable for York to take that stance in the posture that it has – offering a take it or leave it agreement that hinges on one term the parties have not been able to negotiate yet.

Nevertheless, in the spirit of good faith cooperation, and in the interest of not making our many months of negotiation for naught, we offer the following proposal on the remaining clearance issue: Charter will accept York's 84-inch clearance requirement, so long as it does not require Charter to undertake any make ready. This compromise position comports with Section 58-9-3030(A) of the BAA, which provides that "[a]ccess includes the right to nondiscriminatory use of . . . All poles . . . *to the extent not prohibited by the National Electric Safety Code.*" As we read the statute, if York were to require Charter to incur make ready costs to comply with a standard (84 inches) that exceeds the NESC, it would violate the statute by denying access for a reason that is "not prohibited by the NESC."

We welcome your client's prompt consideration of this compromise position. We are hopeful it is one your client can accept so we can conclude our negotiations without the need for Commission assistance.

Best regards,

Paul Werner

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From: Chris McDonald <cmcdonald@tienckenlaw.com>
Sent: Thursday, March 3, 2022 11:14 AM
To: Abraham Shanedling <AShanedling@sheppardmullin.com>
Cc: Paul Werner <PWerner@sheppardmullin.com>; Karen Hallenbeck <khallenbeck@tienckenlaw.com>; Hannah Wigger <HWigger@sheppardmullin.com>
Subject: RE: York Electric Cooperative - your correspondence of 10/11/2021

Abram,

Whether your client intends to go to the PSC over York's clearances can be answered without regard to the remainder of the agreement. We have been directed by our client to do no more work on the document unless that question is answered in the negative.

York has conditionally agreed to make concessions sufficient to satisfy every item on your list except clearances, so absent some other issue your client has not yet raised, the only task remaining is to nail down the language on agreed-to principles to everyone's satisfaction. As I have told you, York is committed to getting that done if we have a meeting of the minds.

If we do not, York's position remains what it has been since we first communicated: that only minimal modifications are required to York's long-used pro forma agreement to bring it in step with the BAA, namely incorporation by reference of 47 C.F.R. § 1.1411 and removal of provisions that 1.1411 replaces. Most everything else to which our client has conditionally agreed relates more to accommodating Spectrum's preferences than satisfying BAA requirements.

If we have an agreement in principle that includes York's clearances, I will work to get you the updated draft as soon as possible. Just let me know. Regardless, I wish you and your wife the very best in this new journey and hope that everything goes well and smoothly. I never understood what a blessing parenthood was until I held my daughter for the first time. Hannah, I look forward to working with you in Abram's absence.

Thanks, Chris

From: Abraham Shanedling <AShanedling@sheppardmullin.com>
Sent: Thursday, March 3, 2022 9:12 AM
To: Chris McDonald <cmcdonald@tienckenlaw.com>
Cc: Paul Werner <PWerner@sheppardmullin.com>; Karen Hallenbeck <khallenbeck@tienckenlaw.com>; Hannah Wigger <HWigger@sheppardmullin.com>
Subject: RE: York Electric Cooperative - your correspondence of 10/11/2021

Chris,

Thanks for the update. Our hope is that we do not need to involve the PSC, but so that our client can make a fulsome and final assessment of the state of the draft agreement, can you please send us the updated version you had promised last week that incorporates the items discussed below.

Just as your client wanted to do a "deeper dive" comparing the agreement to asses whether it could "get comfortable proceeding under a single agreement," Charter's team also would like to do a deeper dive on what York is actually offering in total at this point.

If you could get it to us by the end of this week or first thing next week, that would be ideal so we can get this moving.

Finally, as mentioned before, tomorrow I am heading on paternity leave for a few months. I have copied Paul and my colleague Hannah Wigger here who will assist while I'm out. Going forward, please include her on all future correspondence.

Thanks

Abram Shanedling
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612-578-1478 | cell
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From: Chris McDonald <cmcdonald@tienckenlaw.com>
Sent: Wednesday, March 2, 2022 5:43 PM
To: Abraham Shanedling <AShanedling@sheppardmullin.com>
Cc: Paul Werner <PWerner@sheppardmullin.com>; Karen Hallenbeck <khallenbeck@tienckenlaw.com>
Subject: RE: York Electric Cooperative - your correspondence of 10/11/2021

Abram,

I made it back into the office shortly ago from out-of-town meetings. I haven't had the opportunity to work on additional edits to the agreement yet, but I do have some updates after getting together by phone with our client this morning.

York is willing to proceed under one agreement rather than two, but that concession is contingent upon being pencils down beyond clean-up required to effectuate the items to which the parties have already agreed in principle. Our client does not have a counter-proposal on its clearances; as I have explained, the enhanced clearances were put in place and remain in place for reasons that York believes very strongly are just and reasonable, and they have always been applied on a nondiscriminatory basis.

Based on where we are now, I need to know whether it is your client's intention to petition the PSC to set terms for a new agreement between our clients. If it is, we will not expend the extra time and effort necessary to incorporate the additional concessions York has contingently made in service of getting this agreement finalized.

Your client's answer to that question necessarily dictates what needs to be done with the invoice for its 2021 attachment fees. If we have a meeting of the minds subject to reducing to writing the items to which our clients have agreed in principle, your client may hold off on payment until the new agreement is signed and a new invoice issues. If there is no meeting of the minds, your client should remit payment for the invoice at the \$25 rate as soon as practicable, as that invoice was already past-due at the time you initially contacted me about it.

I will be in the office all day tomorrow and will await word from you whether I should proceed with incorporation of the additional items we have discussed.

Thanks, Chris

From: Abraham Shanedling <AShanedling@sheppardmullin.com>
Sent: Tuesday, March 1, 2022 4:23 PM

20220222 10:50 AM / SCS-20221008-Page 6 of 24

To: Chris McDonald <cmcdonald@tienckenlaw.com>
Cc: Paul Werner <PWerner@sheppardmullin.com>; Karen Hallenbeck <khallenbeck@tienckenlaw.com>
Subject: RE: York Electric Cooperative - your correspondence of 10/11/2021

Chris,

You read my mind, as I literally was about to hit send to you with this note:

We spoke today with our client, and so I wanted to follow up on a number of things. First, do you have ready to share an updated version of the agreement with York's additional edits (as you referenced last week)?

Other open issues that hopefully we can close.

- **2021 invoices:** What does York propose Spectrum do with paying these invoices? Again we've offered two potential avenues: I see two potential options here: (1) York agrees Spectrum does not need cut a check for the 2021 invoice until we resolve the new agreement (including any PSC proceeding if need be); or (2) Spectrum can pay at the \$25 rate, subject to a mutual agreement that once we sign the new agreement, York could issue a true-up based on the agreed rate structure.
- **Rate structure under new agreement:** Spectrum agrees with a starting rate of \$22 per pole and an annual 3% escalator.
- **Pole Replacement Cost allocation:** Spectrum can agree to York's proposal as explained in your 2/23 email below.
- **Dispute Resolution:** Spectrum can agree in principal to your re-worked dispute resolution process below – that ensures either party's right to seek redress at the PSC or ORS isn't superseded by the mediation/arbitration provision. We may have some further edits to your language to streamline the mediation/arbitration section, but we'll wait until you send us a revised agreement draft.
- **Agreement Applicability.** Have you heard anything more from York? Again, our preference is to have a single agreement cover all attachments (existing and new)), since that will be far more administrable for both parties – especially the pole owner. That said, at a minimum, we would want the terms of this new agreement to cover any time York requires work on pre-existing attachments (e.g. for pole replacements...transfers ...technical reasons etc), or when Spectrum alters its pre-existing attachments (e.g. to accommodate other attachers or York). Basically any *new* work that is done on pre-existing attachments, we think should be covered by this new agreement so folks don't have to guess what procedures do or don't apply.
- **NESC grandfathering.** Any reason why we can't put back in the language of the rule? If York already applies it, we see no reason this should be a problem. Our concern is just that the current language only applies to clearance requirements.
- **NESC clearance requirements.** Given it appears the parties have made good progress and reached initial agreement on the vast majority of the "open issues," it seems we should be able to reach agreement on this too and avoid the time and expense of the PSC. We're still open to hearing some other options from York on this, including perhaps if NESC clearance rules are the default, but can be deviated on a pole-by-pole (or application-by-application) based on specific field or pole conditions.

Abram Shanedling
202-747-2644 | direct
612-578-1478 | cell
AShanedling@sheppardmullin.com | [Bio](#)

From: Abraham Shanedling
Sent: Wednesday, February 23, 2022 8:23 PM
To: Chris McDonald
Cc: Paul Werner; Karen Hallenbeck
Subject: RE: York Electric Cooperative - your correspondence of 10/11/2021

Thanks Chris. We will review.

One other item we discussed on our call which you said you'd lock down was application of the NESC grandfathering rule. Looking back at Exhibit B to the current (2004) agreement, it looks like it already employs that rule in some respects, so York should at least be familiar with it. See Exhibit B at its Section 20 – ironically the provision regarding the 18 foot clearance requirement: "Cable facilities installed prior to the execution of this agreement will be grandfathered from this requirement as long as they meet the requirements of the National Electric Safety Code in effect at the time of installation."

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From: Chris McDonald <cmcdonald@tienckenlaw.com>
Sent: Wednesday, February 23, 2022 5:45 PM
To: Abraham Shanedling <AShanedling@sheppardmullin.com>
Cc: Paul Werner <PWerner@sheppardmullin.com>; Karen Hallenbeck <khallenbeck@tienckenlaw.com>
Subject: RE: York Electric Cooperative - your correspondence of 10/11/2021

Abram,

I was just able to catch up with my York contact earlier this afternoon to discuss the open issues from your email. I have re-worked the dispute resolution provision to make clear that the right of a party to seek redress at the PSC or ORS isn't superseded by the mediation/arbitration provision. If there is a specific modification to those provisions that you would like to add to put boundaries on time and cost as we discussed, York has told me that they aren't averse to those in theory but would need to see exactly what is proposed. I have pasted the reworked provision at the bottom of this email; please let me know your thoughts.

Regarding the question of whether we proceed with one agreement or two, I have conveyed your concerns about logistics and administration if we proceed with two agreements governing two sets of attachments, and York's team is going to do a deeper dive in comparing the current and draft agreements side by side to reassess whether York can get comfortable proceeding under a single agreement. Because my contact is just now back into the office after dealing with the death in his family, he will review the agreement ASAP but said it could be the first of next week because he is playing catch-up (he said he'd try his best to get back w/me before the end of the week, though).

Regarding the allocation of pole replacement costs, York proposes the following:

Poles less than 15 years old: no credit

Poles 15-25 years old: 50% credit

Poles older than 25 years: 75% credit unless the poles are actually unserviceable, in which case Licensee will receive 100% credit.

York's rationale on this is that it has been using CCA-treated poles since the late 1980s and had few, if any, failures due to age. Studies suggest that CCA poles can last upwards of 80+ years, so York believes its timeframes are much more in-line with actual serviceable life of the poles.

I will be out of the office all day tomorrow at a client meeting but will be in Friday.

Thanks, Chris

25. **Dispute Resolution.**

- (a) If a dispute, controversy or claim (whether based upon contract, tort, statute, common law or otherwise) arises between the Parties relating to this Agreement (collectively a "**Dispute**"), the Parties will make a diligent and good-faith effort to resolve such Disputes at the local level by the parties' respective local engineers and local managers. If the Dispute concerns which party is responsible for any non-compliance and what corrective action, if any, is necessary or appropriate to remedy any such non-compliance, then the Parties shall each arrange for a representative to make a joint field visit to the Pole location to investigate whether a violation exists and if so, any corrective action needed and the party or parties responsible. The Parties agree that if any Dispute cannot be resolved at as previously described in this paragraph, communications between the following will be permitted and engaged in, in good faith on an expedited basis: between Licensor's appropriate Vice President and a district general manager for Licensee; and, if not resolved by them, between the President of Licensor and the appropriate Vice President for the Licensee. If either Party reorganizes or changes titles, the equivalent person for such party shall perform the above functions.
- (b) If a Dispute cannot be settled through the procedure set forth in paragraph (a) of this Section, the Parties shall first endeavor to resolve the Dispute by participating in a mediation administered by the American Arbitration Association (the "**AAA**") under its Commercial Mediation Rules before resorting to arbitration. Thereafter, any unresolved Dispute shall be settled by binding arbitration administered by the AAA in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator, after the review rights set forth below have been exhausted, may be entered in any court having jurisdiction. The arbitration proceedings shall be conducted in York, South Carolina on an expedited basis before a neutral arbitrator (or multiple arbitrators if called for by the Commercial Arbitration Rules). Each arbitrator shall be an attorney with excellent academic and professional credentials, who (i) is a member of the Bar of the State of South Carolina, (ii) has been actively engaged in the practice of law for at least fifteen (15) years, and (iii) specializes in commercial transactions, with substantial experience in the subject matter of this Agreement. Any attorney who serves as an arbitrator shall be compensated at a rate equal to his or her current regular hourly billing rate. Upon the request of either Party, the arbitrator's award shall include findings of fact and conclusions of law provided that such findings may be in summary form. Either Party may seek review of the arbitrator's award before an arbitration review panel comprised of three arbitrators qualified in the same manner as the initial arbitrator(s) (as set forth above) by submitting a written request to the AAA. The right of review shall be deemed waived unless requested in writing within 10 days of the receipt of the initial arbitrator's award. The arbitration review panel shall be entitled to review all findings of fact and conclusions

of law in whatever manner it deems appropriate and may modify the award of the initial arbitrator(s) in its discretion. The prevailing Party in any arbitration proceeding shall be entitled to an award of all reasonable out-of-pocket costs and expenses (including attorneys' and arbitrators' fees) related to the entire arbitration proceeding (including review if applicable). Upon request of either Party, the arbitrator(s) may require that the subject arbitration proceedings be kept confidential, and no Party shall disclose or permit the disclosure of any information produced or disclosed in the arbitration proceedings until the award is final. A Party shall not be prevented from seeking temporary injunctive relief before a court of competent jurisdiction in an emergency situation, but responsibility for resolution of the Dispute shall be appropriately transferred to the arbitrator(s) upon appointment in accordance with the provisions hereof.

- (c) Either Party may elect, without first engaging in mediation or arbitration as set forth in paragraph (b) of this section, to initiate a proceeding before the South Carolina Public Service Commission ("**PSC**") or the South Carolina Office of Regulatory Staff ("**ORS**") to resolve any unresolved Dispute that falls within the limited jurisdiction granted to either body as set forth in S.C. Code Ann. §§ 58-9-3010 through -3050 or S.C. Code Ann. § 33-49-150(B). Notwithstanding the foregoing, however, nothing herein shall be construed as a waiver by either Party of a right to object to such body's exercise of jurisdiction to address a Dispute or as consent to such jurisdiction. The Parties shall be bound by any final, non-appealable order rendered by such body. If the PSC or ORS, as the case may be, declines to exercise jurisdiction to resolve a Dispute brought before it, the procedure set forth in paragraph (b) of this section will be the exclusive resolution mechanism to resolve such Dispute absent mutual written agreement of the Parties.

sfgs

From: Abraham Shanedling <AShanedling@sheppardmullin.com>
Sent: Thursday, February 17, 2022 4:05 PM
To: Chris McDonald <cmcdonald@tienckenlaw.com>
Cc: Paul Werner <PWerner@sheppardmullin.com>; Karen Hallenbeck <khallenbeck@tienckenlaw.com>
Subject: RE: York Electric Cooperative - your correspondence of 10/11/2021

Chris,

Thanks for the follow up call. The crystalize what we discussed and next steps:

1. **Rate:** York is ok with an annual 3% escalator clause with a \$22 per pole starting rate.
2. **Pole Replacement Cost allocation:** York is generally ok with some sort of scale to allocate costs based on pole age, but will provide edits to our proposal.
3. **Dispute resolution:** Our preference is not to have a mandatory arbitration provision, since it is often as time and cost intensive as litigation. If York does not want to do away with it, then at a minimum, we need some way to limit the time and costs of arbitration. You will inquire about this.
4. **Agreement applicability:** You will get more clarity on this.
5. **NESC.** York is unwilling to sign an agreement unless the parties are in agreement on 100% of the terms – i.e. it does not want Spectrum to sign with reservation of its rights and then have the NESC issue subsequently taken to the PSC.

On that last point, we will confer with our client. Frankly, it's a little disappointing this is York's position given it has known we continue to disagree over the NESC standard (with neither party budging), and yet has sought to continue working toward what seems to be agreement on everything else for the past several months – since we first wrote you in October. In other words, if York was always unwilling to negotiate on the NESC and wouldn't sign an agreement until Charter agreed, knowing we wouldn't agree, why spend this time and effort to keep talking well past the 60 day requirement? We do understand the BAA does contemplate the parties going to the PSC if they cannot reach agreement over a written request (i.e. go before an agreement is signed). But Section 58-9-3030(A)(2) does not actually *preclude* the possibility of going to the Commission after the parties sign – plus Section 24 of the draft agreement (Severability) would kick in and preserve the rest of the agreement.

But if this is York's position, we understand.

Thanks

Abram Shanedling
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From: Abraham Shanedling <AShanedling@sheppardmullin.com>
Sent: Wednesday, February 16, 2022 9:49 AM
To: Chris McDonald <cmcdonald@tienckenlaw.com>
Cc: Paul Werner <PWerner@sheppardmullin.com>; Karen Hallenbeck <khallenbeck@tienckenlaw.com>
Subject: RE: York Electric Cooperative - your correspondence of 10/11/2021

Chris,

We have now spoken with our client about the open matters raised in our last call. Specifically:

- **Rates:** Spectrum is ok with a beginning rate of \$22 per pole. But as discussed, we still need some sort of increase scale memorialized in the agreement.
- **Pole Replacement Cost allocation credit:** Spectrum is ok not using depreciation as a metric to calculate its share of pole replacement costs, but as we discussed, there needs to be some other objective criteria to ensure that Spectrum does not shoulder (a) costs it did not necessitate; and (b) costs that would otherwise be incurred by York – i.e. poles that would already be replaced. To that end, in the attached, we have proposed modifying Section 2(e) as follows:

However, Licensee shall not be required to bear costs, including for installing or changing out poles, that are not necessitated solely as a result of Licensee's Pole Attachments. Notwithstanding the foregoing, when a pole replacement is indeed necessary to accommodate Licensee, Licensee shall pay Licensor costs based on age of the existing pole being replaced according to the following scale: 100% of the costs for poles 5 years or younger; 75% of the costs for poles 6 years to 15 years old; 50% of the costs for poles between 16 years to 25 years old; 25% of the costs for poles 26 years to 35 years old; and zero (0) costs for poles 35 years and older. Licensor may also charge any additional costs associated with advancing the replacement of the existing pole.

- **Dispute resolution:** Your point below about the jurisdictional limit of ORS is well taken. Spectrum is ok with mediation, but not a binding arbitration requirement, since from its experience, protracted arbitration (and mediation) is often a waste of time and resources. To that end, somewhat in line with your proposal before, we have proposed modifying Section 25 in the attached to require B2B negotiations first. If that is unsuccessful, *and* the dispute concerns an issue over which the PSC or ORS have jurisdiction, either party may go to the PSC. But if the dispute concerns an issue over which the PSC or ORS *do not* have jurisdiction, then the parties will go to mediation to occur no later than 60 days from when B2B talks failed. If mediation fails, then either party may seek any further remedy.
- **NESC Grandfathering:** Spectrum is unwilling to waive the NESC grandfathering rule language, which is standard language in pole agreements across the country. We understand York's concern about ensuring attachments are compliant. So to that end, we have proposed reinserting the NESC grandfathering language, but allowing the parties to mutually agree otherwise.
- **Agreement Applicability:** I know you are still discussing this with your client and understand our reasons for wanting a single agreement to cover all. If, however, York is unwilling to have a single agreement, at a minimum, we would want the terms of this new agreement to cover any time York requires work on pre-existing attachments (e.g. for pole replacements...transfers ...technical reasons etc), or when Spectrum alters its pre-existing attachments (e.g. to accommodate other attachers or York). Basically any *new* work that is done on pre-existing attachments, we think should be covered by this new agreement so folks don't have to guess what procedures do or don't apply.

The attached further draft agreement reflects the proposals above, except for the last, which we've left for discussion.

Talk to you tomorrow.

Abram

Abram Shanedling

202-747-2644 | direct

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From: Chris McDonald <cmcdonald@tienckenlaw.com>

Sent: Tuesday, February 15, 2022 6:28 AM

To: Abraham Shanedling <AShanedling@sheppardmullin.com>

Cc: Paul Werner <PWerner@sheppardmullin.com>; Karen Hallenbeck <khallenbeck@tienckenlaw.com>

Subject: Re: York Electric Cooperative - your correspondence of 10/11/2021

That works.

Christopher S. McDonald

The Tiencken Law Firm, LLC

234 Seven Farms Drive, Suite 114

Daniel Island, SC 29492

(843) 377-8423 (direct)

(803) 466-5073 (cell)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2022-__ -

SPECTRUM SOUTHEAST, LLC,

Complainant,

v.

YORK ELECTRIC COOPERATIVE, INC.,

Respondent.

CERTIFICATE OF SERVICE

This is to certify that I, Laura Lee Andrews, a paralegal with the law firm of Willoughby & Hoefer, P.A. have this date caused to be served one (1) copy of the **Petition to Determine Just and Reasonable Terms and Conditions for Pole Attachment Agreement Pursuant to S.C. Code Ann. § 58-9-3030** filed on behalf of Complainant Spectrum Southeast, LLC in the above-captioned matter as set forth below:

Nanette S. Edwards, Executive Director
S.C. Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201
(via hand delivery)

Paul Basha, President & CEO
York Electric Cooperative, Inc.
P.O. Box 150
York, SC 29745
(via USPS Certified Mail, Return Receipt Electronic)

Christopher M. Huber, Esquire
S.C. Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201
chuber@ors.sc.gov
(via email)


Laura Lee Andrews

May 19, 2022
Columbia, South Carolina



The Public Service Commission State of South Carolina

Jocelyn Boyd
Chief Clerk/Executive Director

COMMISSIONERS
Justin T. Williams, Sixth District
Chairman
Florence P. Belser, Second District
Vice Chairman
Carolyn L. "Carolee" Williams, First District
Stephen M. "Mike" Caston, Third District
Thomas J. "Tom" Ervin, Fourth District
Headen B. Thomas, Fifth District
Delton W. Powers, Jr., Seventh District

Clerk's Office
Phone: (803) 896-5100
Fax: (803) 896-5100

June 3, 2022

IN RE: DOCKET NO. 2022-188-EC Spectrum Southeast, LLC, Complainant v. York Electric Cooperative, Inc., Respondent, Petition to Determine Just and Reasonable Terms and Conditions for Pole Attachment Agreement Pursuant to S.C. Code Ann. § 58-9-3030

TO: ALL PARTIES OF RECORD
Pursuant to S.C. Code Ann. Regs. 103-845:

ON OR BEFORE 8/17/2022, as the Complainant you are required to provide the following to the Commission:

1. Order of witnesses you plan to present during the Hearing;
2. Indicate whether you have any objection to taking direct and rebuttal or surrebuttal testimony together during the Hearing; and,
3. Indicate whether there is a desire to use Panels of Witnesses.

There are additional important required deadlines for documents that must be filed with the Commission. You are hereby notified of the following deadlines:

1. **ON OR BEFORE July 20, 2022**, the Complainant(s) must:
 - a. Prefile with the Commission one copy of the direct testimony and exhibits of the Witness(es) that the Complainant(s) intends to present; and,
 - b. Serve the direct testimony and exhibits of the Witnesses upon all Parties of Record (Prefiling with the Commission must be post-marked on or before this date).
2. **ON OR BEFORE August 3, 2022**, All Other Parties of Record and the Office of Regulatory Staff (ORS) must:
 - a. Prefile with the Commission one copy of the direct testimony and exhibits of the Witness(es) they intend to present; and,
 - b. Serve the direct testimony and exhibits of the Witnesses upon all Parties of Record (Prefiling with the Commission must be post-marked on or before this date).
3. **ON OR BEFORE August 10, 2022**, the Complainant(s) may file **Rebuttal Testimony**, if desired. If choosing to file Rebuttal Testimony, the Applicant must:
 - a. Prefile with the Commission 1 copy of the testimony and exhibits of the Witnesses it intends to present; and,



- b. Serve the testimony and exhibits of the Witnesses on all Parties of Record (Rebuttal Testimony and exhibits must be in the offices of the Commission and in the hands of the Parties by the date specified here in No. 3).

4. **ON OR BEFORE August 17, 2022, All Other Parties of Record and the ORS filing Surrebuttal Testimony must:**

- a. Prefile with the Commission 1 copy of the testimony and exhibits of the Witnesses they intend to present; and,
- b. Serve the testimony and exhibits of the Witnesses on all Parties of Record. (Surrebuttal testimony and exhibits must be in the offices of the Commission and in the hands of the Parties by the date specified here in #4).

NOTE: Failure to comply with the instructions contained herein could result in your proposed Witnesses' testimony and exhibits being excluded in the subject proceeding. Additionally, please note failure to comply with the above on or before the dates indicated may result in the **DISMISSAL** of your pleading.

Sincerely,

Clerk's Office



NOTICE OF HEARING**DOCKET NO. 2022-188-EC**

Spectrum Southeast, LLC, Complainant v. York Electric Cooperative, Inc., Respondent, Petition to Determine Just and Reasonable Terms and Conditions for Pole Attachment Agreement Pursuant to S.C. Code Ann. § 58-9-3030

PLEASE TAKE NOTICE that a hearing on the above matter, pursuant to S.C. Code Ann. Regs. 103-817 and S.C. Code Ann. Section 58-9-3030, has been scheduled to begin on **Wednesday, August 31, 2022, at 10:00 a.m.**, before the Public Service Commission in the Commission's Hearing Room at 101 Executive Center Drive, Suite 100, Saluda Building, Columbia, South Carolina 29210.

S.C. Code Ann. Section 58-9-3030 (A)(2) states, in part, “(2) Notwithstanding item (1), a communications service provider may submit to an electric cooperative a written request to negotiate agreements addressing the attachment or placement of facilities, after the date of the written request, by the communications service provider on or in the existing or new poles or structures of the electric cooperative. Unless the communications service provider and the electric cooperative agree otherwise, such agreements must not address facilities that were attached or placed prior to the date of the written request to negotiate. The parties must negotiate in good faith for at least sixty days after the written request, after which either party may petition the commission to determine just and reasonable rates, terms, and conditions for the agreements. The commission must make such determination within one hundred eighty days of the filing of the petition for that determination and the commission's determination must apply retroactively to all facilities attached or placed between the date of the written request to negotiate and the date of the commission's determination.”

INSTRUCTIONS TO ALL PARTIES OF RECORD (Applicant, Petitioners, and Intervenor only):

**** On or before Wednesday, August 17, 2022, please provide the order of witnesses to be presented during the hearing, whether there is an objection to taking direct and rebuttal or surrebuttal testimony together during the hearing, and whether or not there is a desire to use panels of witnesses. ****

For the most recent information regarding this docket, including changes in scheduled dates included in this Notice, please refer to www.psc.sc.gov and *Docket No. 2022-188-EC*.

In the above referenced case, if the proposed tariffs contain any request for a change of rates, the proposed rates may be changed by the Commission.

Persons seeking information about the Commission's procedures should contact the Commission at (803) 896-5100 or visit its website at www.psc.sc.gov.

6/3/22



**BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**

DOCKET NO. 2022-188-EC

Spectrum Southeast, LLC,

Complainant,

v.

York Electric Cooperative, Inc.,

Respondent.

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CERTIFICATE OF SERVICE

I, Elise Wilson, do hereby certify I have, on the date indicated below, served the following named entities/individual(s) with one (1) copy each of the documents listed respectively as follows below:

- a) **Complaint and 30-Day Notice and Notice of Hearing and Prefile Testimony Letter via Hand Delivery:**

**VIA SOUTH CAROLINA SECRETARY OF STATE – SERVICE OF PROCESS to
serve upon:**

YORK ELECTRIC COOPERATIVE, INC.
HEADQUARTERS
East Liberty Street
York, South Carolina 00000

- b) **Complaint and 30-Day Notice and Notice of Hearing and Prefile Testimony Letter via Registered U.S. Certified Mail Restricted Delivery, with sufficient postage attached and return address clearly marked to:**

York Electric Cooperative, Inc.
Paul Basha
P.O. Box 150
York, South Carolina 29745

- c) **Complaint, 30-Day Notice, and Notice of Hearing and Prefile Testimony Letter via Electronic Service via the PSC Docket Management System and via E-Mail to:**

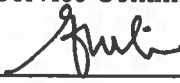
Spectrum Southeast, LLC
Andrew J. D'Antoni
Email: adantoni@willoughbyhoefer.com

Andrew M. Bateman
Email: abateman@ors.sc.gov

Sandra Moser
Email: Sandra.Moser@psc.sc.gov

Roger P. Hall*
Email: rhall@scconsumer.gov

Clerk's Office
Public Service Commission of South Carolina

By: 
Elise Wilson

Columbia, South Carolina
June 3, 2022